IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA 1928

WP(C).No. 355 of 2007(P)

PETITIONER:

PERINAD COCONUT PROCESSING & MARKETING
CO-OP. SOCIETY LTD.NO.Q 47,
PERINAD P.O., KOLLAM, REP. BY PRESIDENT
SRI.RAVEENDRAN PILLAI.

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS:

JOINT REGISTRAR OF CO-OP. SOCIETIES
(GENERAL),
KOLLAM.

BY SENIOR GOVERNMENT PLEADER, SRI P.N.SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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W.P.(C) No. 355 of 2007 (P)

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Dated this the 4th day of January, 2007

J U D G M E N T

The writ petitioner Society is issued with Exhibit P8 notice dated 18/12/2006, under Section 32 of the Kerala Co-operative Societies Act, in short, 'the Act', directing the writ petitioner to show cause, why the committee of the writ petitioner Society should not be removed and new committee appointed, because of the irregularities noted in the report of the Assistant Registrar, Kollam, dated 18/09/2006, conducted under Section 66 (1) of the Act.

2. I have gone through Exhibits P6 and P7. Both are dated 04/08/2006. The sale of the property by the writ petitioner was restrained. On the same day the Unit Inspector of Perinad, under the Assistant Registrar (General) of Kollam, was directed to conduct an enquiry under Section 66(1) of the Act and file a report. Exhibit P8 notice had been issued basing on Exhibits P6 and P7.

3. The learned counsel appearing for the petitioner submitted that as per Exhibit P3 order dated 30/11/2005, permission was granted to sell 65 cents of the property out

of 1 acre 32 cents of the property, held by the writ petitioner. It was specified in Exhibit P3 that, after publishing in two dailies, to sell 65 cents of the property and clear all the liabilities that exists with the Government in respect of the writ petitioner Society. The counsel brought to my notice that on publication in two dailies, there were only two tenders received and the amounts stated by them were low. However, one Molly Varghese, approached the writ petitioner, offering an amount of Rs.38,000/- per cent. That being higher than the tenders received on publication through dailies, the President of the writ petitioner Society struck the deal and sold 15 cents of the property for Rs.5,70,000/-. This amount had been remitted to the Marketing Federation, towards existing liabilities against Exhibits P1 and P2. The counsel further submits that the sale of 15 cents was done, so as to clear the liabilities with the amount so received. Further sale of the remaining property permitted could be with a higher amount. However, because of the order of restraint, issued under Exhibit P6 dated 04/08/2006, no sale could be held. There was no mala fide. It is apprehended by the writ petitioner that show cause notice under Section 32 of the Act had been issued with an intention of removing the managing

committee and if at all there was any minor defect and error in the administration of the petitioner, it could be allowed to be corrected by the Registrar under Section 65(4) of the Act. Therefore, it is prayed that Exhibit P8 may be interfered with.

4. I have also heard the detailed arguments of the Senior Government Pleader. I am not entering into the findings on the necessity of the completion of the enquiry under Section 65(5) and passing of an order thereon. Nevertheless under Section 65(4), it is revealed, during an enquiry, there are only minor defects, the Registrar is empowered to allow the Society to correct those minor defects he may come across. Only thereafter he may resort to Section 32.

5. I have gone through the materials that are placed before me. I am not satisfied that any situation or circumstances exist to issue a show cause notice under Section 32 of the Act, as the writ petitioner had acted with the bona fide intention of selling a portion of the permitted 65 cents of property. There is nothing before me to show that the respondent has come to a final finding that there was any mala fide on the part of the writ petitioner Society.

6. In the above circumstances, I set aside Exhibit P8. The respondent may examine the entire matter and, if found necessary, pass orders including under Section 66(5) basing on the report he had received from the Assistant Registrar, Kollam. If there are any minor defects noted through the report filed by the Assistant Registrar, the respondent shall proceed under Section 65(4) allowing the Society to correct those defects. Exhibit P6 order restraining the writ petitioner from further selling the property from the portion of the permitted 65 cents of the property, shall be modified, so as to enable the writ petitioner to sell from the remaining portion of 65 cents of the property to meet the liabilities, as had been ordered on 04/08/2006.

7. I make it clear that this judgment will not stand in the way of the respondent proceeding according to the law, if it is found that, on completion of the enquiry, there are irregularities or defects, other than as stated in Section 65(4) of the Act.

(J.M.JAMES)
Judge

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